



February 7, 2023

VIA ELECTRONIC CASE FILING

The Honorable Michael A. Hammer
United States Magistrate Judge
United States District Court for the District of New Jersey
Martin Luther King Federal Building and U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

**Re: *In re Revlimid & Thalomid Purchaser Antitrust Litigation*, 19-7532-ES-MAH
(D.N.J.)**

Dear Judge Hammer:

I write on behalf of the individually-litigating Health Benefit Provider Plaintiffs¹ to ask the Court to deny Teva and Natco's request for a stay, of any kind, affecting the Health Benefit Provider actions. The facts about the Natco litigation and resulting settlement agreement can and should be discovered once, efficiently, across all consolidated actions—so long as doing so does not otherwise slow down the Health Benefit Providers' cases.

The Health Benefit Providers do not know what specific relief Teva and Natco (or any defendant) seeks. We have a general understanding that they want to stay discovery in the retailer and end-payer class cases (based on remarks made during a status conference for those cases). But counsel for Teva and Natco refused repeated requests to tell us — before today —

¹ These plaintiffs and their respective dockets are: Humana, Inc., 19-cv-7532; United HealthCare Services, Inc., 21-cv-18531; BCBSM, Inc., Health Care Services Corporation, and Blue Cross and Blue Shield of Florida, Inc., 21-cv-6668; Blue Cross and Blue Shield Association, 21-cv-10187; Cigna Corporation, 21-cv-11686; and Molina Healthcare, Inc., 22-cv-4561.

what they sought to stay, in which cases, and affecting which claims. To the extent that any defendant now seeks to stay discovery about the facts and circumstances of the Natco agreement in the Health Benefit Provider actions, we oppose.

First, the cat is already out of the bag. Last week, Celgene and BMS produced 846,120 documents, spanning 6,790,795 pages, and comprising almost a terabyte of data. This production includes a written agreement between Celgene and Natco that purports to resolve the Natco litigation.

Second, since last March, this Court — both Judge Hammer and Judge Salas — has made clear to Celgene and BMS that discovery in the three-year-old Health Benefit Provider actions should proceed in a “fulsome fashion” while motions to dismiss are pending.² In August, the Court recognized that (1) facts about the Natco litigation and settlement are inextricably linked to the Health Benefit Providers’ other anticompetitive scheme and sham litigation claims, and (2) “carv[ing] up discovery into little pieces as to what goes forward now, versus what a stay pending a motion to dismiss, [] would invite discovery disputes galore and render case management nearly impossible....”³ That other plaintiffs, in newly filed actions, named Teva and Natco as additional defendants neither changes that calculus nor otherwise warrants reversing course.

Third, the proper remedy for any hardship Teva may cite is to make modest adjustments to the existing schedule. Teva and Natco’s counsel did not provide (as requested)

² See August 29, 2022 Hearing Tr., ECF No. 62 at 23–24, (“So, I have very carefully considered the defendants’ position. I will tell you; I’ve also conferred with Judge Salas about this, going all the way back to September 2019 and again very recently. And the appropriate course here is for discovery to proceed without limitation.”); March 7, 2022 Hearing Tr., ECF No. 62 at 8–9 (“To be clear, though, once ... we’re down to briefing on any motion to dismiss on case- or pleading-specific issues, discovery will go forward.”); Sept 13, 2019 Hearing Tr., ECF No. 35 at 8 (the “Court has already made clear to the defense that if some part of the complaint were dismissed without prejudice to the plaintiffs’ right to replead, fact discovery would not abide a further motion to dismiss and would proceed notwithstanding.”).

³ August 29, 2022 Hearing Tr., ECF No. 62 at 23–24.

any insight into what modest adjustments could be made to the schedule that could avoid an outright stay. As a starting point, the Health Benefit Providers would agree to a two-month extension of the close of fact discovery, until August 31, 2022. Other tweaks may also be appropriate. We remain willing to meet and confer on these matters.

Respectfully submitted,

By: /s/ Peter D. St. Phillip, Jr.

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